STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	)	
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	)	**ICC Docket No. 00-0393**
Proposed Implementation of High Frequency Portion of Loop (HFPL)/ Line Sharing Service.	)	
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INITIAL BRIEF ON REHEARING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the above-captioned matter.

I. Procedural History

On April 21, 2000, the Illinois Bell Telephone Company (hereafter "Ameritech") filed a tariff offering High Frequency Portion of the Loop (hereafter "HFPL")/ line sharing service. On June 1, 2000, the Commission entered an order suspending the tariff, and directing an investigation of the propriety of the tariff. Thereafter several parties, including AT&T Communications of Illinois Inc. (hereafter "AT&T"), Sprint Communications L.P. (hereafter "Sprint"), Rhythms Links Inc. (hereafter "Rhythms"), Covad Communications Company (hereafter "Covad"), WorldCom Inc. (hereafter "MCI"), Focal Communications of Illinois (hereafter "Focal"), and a consortium referring to Itself as the CLEC Coalition (hereafter "Coalition"), among others, filed petitions seeking leave to intervene, which were in all cases granted.

A schedule was duly set, and testimony prefiled, by Ameritech, AT&T, MCI, Sprint, Covad, Rhythms, the Staff, and other parties. Hearings were duly convened on October 16-19, 2000, and testimony and evidence taken into the record, after which the matter was marked "Heard and Taken." After subsequent briefing and issuance of a Hearing Examiner's Proposed Order (hereafter "RDO"), the Commission considered the matter and, on March 14, 2001, entered an Order in the matter which, *inter alia*:

1. required Ameritech to offer its "Project Pronto" architecture to CLECS as six unbundled network elements (hereafter "UNEs"), Order at 25;
2. required Ameritech to offer CLECs direct access to back office systems for pre-ordering, ordering, provisioning and billing purposes, Order at 63-66;
3. determined that Ameritech was entitled to recover $0 for the HFPL, Order at 86-87;
4. determined that Ameritech was entitled to recover $0 for manual loop qualification, Order at 83; and
5. determined that Ameritech was entitled to recover $0 for recurring OSS modifications. Order at 88.

Ameritech made a timely Application for rehearing. *See* Verified Application for Rehearing, April 13, 2001. In its Application, Ameritech asserted, *inter alia*, that:

1. the Commission's Order, to the extent that it requires Ameritech to unbundled the "Project Pronto" architecture, violates federal law in that it constitutes a requirement that packet switching be unbundled, contrary to FCC findings, misapplies the "impair" standard applicable to unbundling, fails to imply the standard to each of the elements that it directs Ameritech to unbundle, requires Ameritech to combine elements in defiance of federal court decisions in Iowa Utilities Board v. FCC, and has the potential to require Ameritech to build new facilities for CLECs. *See* Application for Rehearing at 23-47.

2. the ADLU cards used in Project Pronto do not meet the legal standard for collocation, Application for Rehearing at 48-55;
3. the requirement that Ameritech unbundled Project Pronto elements is technically unsound and largely infeasible, and economically infeasible, Application for Rehearing at 58-69;
4. the $0 rate for the HFPL UNE is unlawful, discriminatory, constitutes unsound policy, and constitutes a taking of Ameritech's property, Application for Rehearing at 80-91;
5. the requirement that CLECs be given direct access to Ameritech's back office systems is unnecessary, costly, and not required by law, as well as allowing CLECs access to information to which they are not legally entitled, to which Ameritech retail employees do not have, and which is confidential. Application for Rehearing at 92-108. In addition Ameritech asserted that OSS issues ought to be resolved in the OSS Collaboratives and related proceedings, Application for Rehearing at 109;
6. the $0 rate for manual loop qualification is improper, Application for Rehearing at 114;
7. the $0 rate for recurring OSS modification is improper. Application for Rehearing at 115.

On May 1, 2001, the Commission granted Ameritech's Application for Rehearing on the points noted above. *See* Notice of Commission Action, May 2, 2001. The parties, who proved to be generally the same as those in the initial phase, duly filed testimony, and hearings were heard and evidence taken on July

17-24, 2001. *See, generally*, Transcripts. The matter was thereafter declared "heard and taken."

II. The Commission has Authority to Modify Conditions of UNE Access or to Prescribe Additional UNEs

State public utility commissions may add elements to the national list of elements required to be unbundled, provided that the unbundling of such elements can be accomplished in compliance with sections 252(d)(3)(B) and (C) of the Act, 47 U.S.C. §252(d)(3)(B), (C). UNE Remand Order, ¶153. Moreover, state Commissions clearly must apply the standards promulgated by the FCC to determine whether an element must be unbundled.

A. Statutory Basis for Standards

Section 251(c)(3) of the federal Telecommunications Act, 47 U.S.C. §251(c)(3) requires incumbent local exchange carriers (hereafter "ILECs") to:

> …provide to any requesting telecommunications carrier for the provision of an telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Section 251(d) of the Act, 47 U.S.C. §251(d), charges the Federal Communications Commission (hereafter "FCC") with "establish[ing] regulations to

implement the requirements of this section." Specifically, Section 251(d) requires the FCC, in determining what unbundled network elements must be made available under section 251(c)(3), to "consider, at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) whether the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the service that it seeks to offer." 47 U.S.C. §251(d)(2).

The *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999)(hereafter "UNE Remand Order") provides specific guidelines for interpretation of Section 251(d) and determining whether individual network elements must be unbundled. The UNE Remand Order creates a national list of elements that ILECs must unbundle. *See, generally*, UNE Remand Order, ¶¶165-449.

B. "Necessary" Standard

Pursuant to the UNE Remand Order, a network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning, or purchasing an alternative from a third party supplier, lack of access to the element would, as a practical, economic, and operational matter, preclude a requesting carrier from providing the service it seeks to offer. UNE Remand Order, ¶44; *see, also, generally*, 47

CFR 52.319. Otherwise put, there must be no practical, economic, and operational alternative to the element available. Id.

As has been noted, the "necessary" standard applies only to proprietary elements. UNE Remand Order, ¶31. Whether an element is "proprietary" is determined pursuant to intellectual property laws. UNE Remand Order, ¶34. Thus, for an element to be deemed proprietary, the ILEC claiming proprietary status must show that it has invested resources to develop the element or information associated with it such as to render it subject to protection of the laws governing patents, copyrights, or trade secrets. UNE Remand Order, ¶35. Elements based upon widely accepted industry standards are not proprietary. UNE Remand Order, ¶36.

C. "Impair" Standard

Lack of access to an element on an unbundled basis "impairs" the ability of a CLEC to provide a service it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning, or purchasing an alternative from a third party supplier, lack of access to the element "materially diminishes" the CLEC's ability to provide the service it seeks to offer. UNE Remand Order, ¶51. The "impair" standard applies to non-proprietary elements. UNE Remand Order, ¶31.

To determine whether the lack of access to an element materially diminishes a CLEC's ability to provide a service to the point that such ability is impaired, the FCC considers the following factors:

1. All forward-looking costs that CLECS would incur using alternative elements. UNE Remand Order, ¶¶72, 74. If the use

of an alternative element would impose substantial sunk or fixed costs upon a CLEC, this factor militates in favor of unbundling. *See* UNE Remand Order, ¶¶75-80. In considering costs, it is proper to consider which customer classes the CLEC seeks to serve. UNE Remand Order, ¶¶81-83.

2. The time necessary to obtain or provision alternative elements, or more accurately, the delays associated with self-provisioning elements, as opposed to obtaining them as unbundled elements from ILECs. UNE Remand Order, ¶¶89-90, 95. If such delays exceed six months to one year, this factor supports unbundling. UNE Remand Order, ¶91.

3. The quality of alternative elements available. UNE Remand Order, ¶96. If the use of alternative elements compels a CLEC to provide service that is diminished in quality, this argues in favor of unbundling. *Id*.

4. The ability of CLECs to provide service on a ubiquitous basis using alternative elements. UNE Remand Order, ¶¶97-98. If the use of an alternative element materially restricts the number or geographic location of customers that a CLEC can serve, this supports unbundling of the element. *Id.*

5. Material operational or technical differences in functionality that arise from interconnecting alternative elements may also impair a CLEC's ability to provide service, which will, if found, support unbundling. UNE Remand Order, ¶99.

D. Other Factors for Consideration

In addition to the "necessary" and "impair" standards, the FCC determined that other factors might be considered in determining whether a network element should be unbundled. UNE Remand Order, ¶101. This authority, the FCC concluded, is based upon the language of Section 252(d)(2) which requires consideration, "at a minimum," the necessity of an element, or the impairment that lack of access to an element would cause. *See* 47 U.S.C. §252(d)(2).

Other factors for consideration, in addition to the "necessary" and "impair" standards, when analyzing whether an element should be offered on an unbundled basis, are the following:

1. Whether requiring the element to be offered on an unbundled basis will encourage the rapid introduction of competition into all markets. UNE Remand Order, ¶107.

2. Whether requiring the element to be offered on an unbundled basis will promote facilities-based competition, investment and innovation. UNE Remand Order, ¶110.

3. Whether requiring the element to be offered on an unbundled basis will reduce regulatory obligations. UNE Remand Order, ¶113.

4. Whether requiring the element to be offered on an unbundled basis will provide uniformity and predictability which will enable new entrants to develop national and regional business plans, and attract capital. UNE Remand Order, ¶114.

5. Whether requiring the element to be offered on an unbundled basis will be practical to administer and apply. UNE Remand Order, ¶115.

E. Packet Switching

The FCC has spoken to the issue of packet switching, which is at issue here. Packet switching is defined as the function of routing data units based on addresses or information contained in the packets. UNE Remand Order, ¶¶302, 304. Packet switching is required to be unbundled only in very limited circumstances. UNE Remand Order, ¶¶306, 313. The FCC declined to require general unbundling of packet switching based upon evidence that CLECs are aggressively deploying the infrastructure necessary to provide packet switching.

UNE Remand Order, ¶¶306-7. The limited exception to this rule occurs where conditioned copper loops are unavailable, thereby preventing CLECs from deploying the D-SLAM devices necessary to provide xDSL service. UNE Remand Order, ¶313. Significantly, the FCC suggests that CLECs aggrieved by this conclusion may seek relief from state public utility commissions. UNE Remand Order, ¶312.

III. The Commission should Require Unbundling of the Project Pronto Architecture

A. Competitors are Impaired by Lack of Access to the Unbundled Project Pronto Architecture

The unbundling of Project Pronto remains a sound pro-competitive policy. Staff Ex. 1.0 at 2 *et seq*. Moreover, such unbundling can be accomplished without reducing Ameritech's incentives to invest in network upgrades. Id. at 11 *et seq*. As the testimony and record of each of the *four* proceedings reflects, for meaningful competition to develop, competitors must have an effective means to compete with the incumbent. Staff Ex. 1.0 at 3. Unbundled access to Project Pronto is crucial for CLECs to compete with Ameritech in high-speed data services. Id. at 3-4.

At the outset, it should be noted, as appears to be undisputed among the parties, that the Commission should apply the "impair" standard, rather than the "necessary" standard, in light of the fact that the Project Pronto architecture

contains no elements which are proprietary to SBC. In fact, it is SBC's position that all Project Pronto elements are commercially available.

Although Ameritech consistently argues that Project Pronto is an overlay network and does not replace existing facilities, the numerous proceedings have made clear that alternatives to the unbundling of Project Pronto are, in reality, often no alternatives at all. Staff Ex. 1.0 at 3. For example, Ameritech contends that a CLEC that wants to provide data services in an area served by Project Pronto could collocate at the remote terminal ("RT") and purchase dark fiber from Ameritech (if available) or purchase fiber capacity from a third party. Id. However, operational and administrative obstacles, particularly the lack of space in RTs, often would make collocation at the RT impossible. Id. Even where RT collocation is possible, the number of customers served by a single RT often makes leasing collocation space an excessively costly alternative on a per-customer basis. Id. at 3-4. Staff believes it is not a feasible alternative, technically or economically, to require a CLEC to collocate at each and every RT, many of which might terminate only a few hundred sub-loops. Id. The FCC recognizes this fact in its Line Sharing Reconsideration Order when it states that:

> [F]iber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminals is likely to be costly, time consuming, and often unavailable. We provide this clarification because we find that it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services.
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> Third Further Notice Of Proposed Rulemaking, CC Docket No. 98-147; Sixth Further Notice Of Proposed Rulemaking; CC Docket No. 96-98; FCC No. 01-26 (Line Sharing Reconsideration Order), ¶ 13.

Ameritech proposes, as a second alternative to CLEC use of the Project Pronto network is for a CLEC to resort to spare all-copper loops. Staff Ex. 1.0 at 4. However, in areas where Ameritech initially served communities by an "old" fiber-fed DLC architecture, spare copper loops connecting the RT with the CO are typically unavailable. Id. In addition, many of the copper loops being replaced by Project Pronto are probably incapable of delivering advanced services because of their considerable lengths. Id. Where all-copper loops are capable of delivering advanced services, it is likely that the copper loop would require loop conditioning, which is an additional expense not incurred by Ameritech or a CLEC having unbundled access to Project Pronto. Id.

In sum, competitors will be impaired significantly in their efforts to compete with Ameritech if they do not have unbundled access to Project Pronto. The very fact that SBC viewed the existing alternatives as insufficient in order to provide ubiquitous DSL coverage is itself a strong argument for unbundling Project Pronto.

B. Ameritech's arguments regarding competition in the broadband market are misplaced

Ameritech witnesses Dr. Aron, Dr. Crandall and Dr. Levin discuss at great length the competitiveness of the high-speed Internet access market. *See, generally*, Ameritech Ex. 2.0, 8.0, 11.0. All three witnesses assert that

unbundling Project Pronto is unnecessary since Ameritech already faces competition from other sources, particularly cable modem service. Id.

While this is interesting, and perhaps true, it is not relevant. Ameritech's claims concerning the state of the high-speed Internet access market are not, in fact, legal arguments that go to the matters at issue in this case. Instead these arguments are attacks on the line sharing requirement in general. If one accepts Ameritech's assertions regarding the highly competitive nature of the broadband market – and follows them to their logical conclusion – there would be no need for the line sharing obligation in the first place. However, Ameritech's aversion to line sharing is something the Commission need not consider; the company's line sharing obligation is an accomplished fact. Regardless of whether Ameritech accepts its line sharing obligations from an economic standpoint, the FCC required unbundling of the HFPL after careful application of the statutory requirements for such unbundling. *See, generally*, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 98-147; CC Docket No. 96-98, FCC No. 99-355, *14 FCC Rcd 20912; 1999 FCC LEXIS 6303; 18 Comm. Reg. (P & F) 758* (December 9, 1999) (Line Sharing Order). The FCC found that an ILEC's "failure to provide such access impairs the ability of a competitive LEC to offer certain forms of xDSL-based services." Line Sharing Order, ¶ 25. The FCC further stated that "lack of access [to the HFPL] would materially raise the cost for competitive LECs to provide advanced services to residential and small business

users, delay broad facilities-based market entry, and materially limit the scope and quality of competitor service offerings." Id.

As such, Ameritech's arguments regarding competitive alternatives (apart from those based upon the public switched telecommunications network) to xDSL service obfuscate, rather than shed light upon, the issues in this proceeding. Ameritech proffers arguments that are essentially aimed at attacking the general line sharing requirement.

In finding that competitors should have unbundled access to Project Pronto, this Commission determined that the federally mandated line sharing requirement applies to all loops, not just loops consisting entirely of copper facilities. This is wholly consistent with federal policies, as the FCC has clearly stated that:

> [T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services.
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> Line Sharing Reconsideration Order, ¶10.

In a typical line sharing environment (using central office-based DSLAMs and all-copper loops), CLECs can offer all desired variations of xDSL services that can coexist on a single line with voice services, since CLECs are able to install their own equipment at the CO, enabling them to deploy the types of xDSL services they desire. Staff Ex. 1.0 at 6. In a Project Pronto environment, the equipment used to provide the various types of xDSL services is placed at the

remote terminal, instead of the central office. Id. Line cards that plug into Next Generation Digital Loop Carrier (NGDLC) systems at the RT perform the functions that a D-SLAM and a splitter perform at a central office. Id. If CLECs cannot specify the types of line cards deployed at the remote terminal, they do not have the same options as they would in a typical line sharing situation. Id. at 7.

In light of this, the Commission should conclude that CLECs will be significantly impaired in their ability to provide broadband service if the Project Pronto architecture is not unbundled. It is evident that the collocation of DSLAMs (where possible, and where spare copper loops exist) is certain to increase a CLEC's fixed and variable costs of providing service. *See* UNE Remand Order, ¶¶ 72-83. Likewise, the provisioning of alternatives (i.e., collocation of DSLAMs and obtaining – where possible –conditioned loops) is not a process calculated to facilitate deployment within six months to one year, *see* UNE Remand Order, ¶ 91, especially in light of the fact that Ameritech is permitted a 105 *business* day interval for provisioning collocation. *See, generally*, Order, ICC Docket No. 99-0615. Similarly, a CLEC that must collocate costly DSLAMs in all or most of two thousand-odd RTs – assuming that space is available to do so – will have an extraordinarily difficult time providing ubiquitous service. *See* UNE Remand Order, ¶¶ 97-98. In addition, the unbundling requirement is virtually certain to materially advance the introduction of competition into all markets, *see* UNE Remand Order, ¶ 107, and will foster innovation as CLECs employ the functionalities of a variety of ADLU line cards to provide different, variegated

products and services. *See* UNE Remand Order, ¶ 110. Likewise, requiring Ameritech to offer Project Pronto on an unbundled basis will provide uniformity and predictability that will enable new entrants to develop national and regional business plans, and attract capital[1]. *See* UNE Remand Order, ¶114. Finally, Staff has offered a proposal in this proceeding that would, if adopted, render it practical to administer and apply the Commission's decision to unbundled Project Pronto. *See* UNE Remand Order, ¶115.

Ameritech appears to argue that Project Pronto is essentially a packet switching network, which is not subject to federal unbundling requirements, and which should not, accordingly, be unbundled. This argument, however, is ill taken. First, the FCC, while declining in the *UNE Remand Order* to require that packet switching be unbundled except in limited circumstances, UNE Remand Order, ¶¶302, 304, 306, 313, nonetheless found that state Commissions are authorized to order the unbundling of packet switching technologies[2]. UNE Remand Order, ¶ 312. In addition, the FCC found that

> [I]f a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to

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[1] The Commission should carefully consider the effect of its decision upon the position of CLECs in capital markets, and upon their ability to implement business plans. As this Initial Brief is being prepared, it appears that Rhythms Links Inc., a CLEC that has taken an active part in this proceeding, has filed for protection from its creditors under Chapter 11 of the Bankruptcy Code. Several other CLECs have been compelled to take similar measures in recent months.

[2] While the FCC referred specifically in this paragraph to frame-relay service, it is clear from the paragraph that the FCC referred generally to packet switching technology. For example, it noted that it intended to "define unbundled network elements, to the extent practicable, in a technologically neutral manner so as to not favor one particular packet switching technology over another. Defining an unbundled network element according to a particular packet switching technology, such as frame relay, violates this principle of technological neutrality." UNE Remand Order, ¶ 312.

> unbundled packet switching. … [Accordingly], incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.
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> UNE Remand Order, ¶ 313

There appear to be real questions regarding whether (a) there will in all cases be space available for CLECs to collocate – virtually or otherwise – DSLAMs at RTs, or whether such collocation is otherwise possible; and (b) whether spare copper loops will be available. In addition, there is little question that Ameritech intends to deploy Project Pronto for its own use. Accordingly, the packet switching exemption does not provide Ameritech with a compelling argument against unbundling.

Indeed, arbitrators at the Texas PUC have recently found that the same Project Pronto architecture at issue here is not exempt from unbundling by virtue of the packet switching exception. *See Arbitration Award*, Petition of IP Communications / Petition of Covad Communications and Rhythm Links, Inc., Texas PUC Docket Nos. 22168 / 22469 (hereafter "Texas Award"). There, the arbitrators specifically found that the Project Pronto architecture is designed to, and in fact does, replace copper facilities, depriving CLECs of means to serve customers other than the Project Pronto network. Texas Award at 76-7. In so finding, the arbitrators rejected SBC "overlay network" argument. Id. Next, the arbitrators determined that CLECs will be impaired in their ability to compete based upon the virtual certainty that spare copper facilities will not exist everywhere. Id. at 77. Third, the arbitrators found that SBC does not allow CLECs to collocate DSLAMs at RTs on the same terms and conditions that it

affords itself, in part because it does not permit CLECs to own and collocate their own line cards. Id. at 72, 77-8[3]. Finally, the arbitrators rejected out of hand SBC's assertion that Project Pronto was not deployed for SBC's own use. Id. at 78. Significantly, the arbitrators ordered SBC to unbundle the end-to-end service in the same manner Staff proposes as an alternative in this rehearing. Texas Award at 62, 75.

Accordingly, Ameritech cannot successfully rely upon the fact that the FCC has declined to unbundle packet switching in general.

C. The Staff's Proposal that Ameritech be Required to Offer an NGDLC UNE Platform Should be Adopted, if the Commission Determines that Unbundling Individual Elements is Infeasible

Should the Commission determine that unbundling of Project Pronto, and specifically line card collocation, is infeasible – which the Staff does not recommend – it is nonetheless possible to require Ameritech to offer Project Pronto in the form of an end-to-end unbundled product – a sort of "NGDLC UNE-P". This is vital, since unbundling and some form line card collocation ensures that competitors have the ability to innovate and determine their own competitive offerings, rather than solely relying upon Ameritech's potential deployment schedule. Competitors are allowed to "push the envelope" when it comes to deploying new and differentiated service offerings to their customers. With line card collocation, the incumbent no longer acts as the gatekeeper to the set of

[3] Significantly, the arbitrators found that "[u]ncontroverted evidence in this record indicates that SWBT designed the RTs in such a manner as to preclude any reasonable CLEC access to sub-loops at the RT even though vendors manufacture RTs with cross-connect functions that

advanced services that will be offered to residential and business customers. Instead, each competitor can use the inherent features and capabilities of the NGDLC even where Ameritech itself is either not ready, or decides not to employ the additional capabilities. In their respective testimony, Ameritech witnesses Drs. Aron, Levin and Crandall ignore the benefits of innovation the Commission's requirements will produce. Increased innovation and a greater variety of services are the main benefits associated with unbundling and therefore competition. Nobody disagrees that unbundling has the potential to, and in most cases indeed does, increase the incumbent's costs. However, such unbundling is done on a regular basis because the perceived benefits with unbundling are assumed to be greater than the additional costs as a result of unbundling. Ameritech's three economists put the emphasis on the additional costs and the potential reduced investment incentives for Ameritech, while completely ignoring the benefits of increased competition and innovation. While this position can be considered rational behavior on Ameritech's part, it should not be forgotten that the Commission's task is to look at both sides of the equation. That is, it has the responsibility to weigh any potential incremental costs to unbundling against the potential benefits associated with increased innovation and competition. It is Staff's opinion that the potential benefits of increased innovation in this fast-changing technological environment outweigh the additional costs associated with unbundling. This is especially true with Staff's proposal to order an end-to-end NGDLC UNE-platform in lieu of the Commission's earlier unbundling requirements. Project Pronto is a multi-year undertaking that will shape SBC's

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allow access to subloops[.]" Texas Award at 72.

network infrastructure for some time to come. Consumers will benefit from new and innovative services if CLECs have the ability to participate in shaping the technological future.

As noted *infra*, sound policy dictates that the Commission should act to afford competitive carriers the ability to use the inherent features, functions and capabilities of the NGDLC system as soon as they become available. To accomplish this, CLECs need not *own* line cards once they are placed into the RT instead, it can be achieved when CLECs can *determine* the type of line cards to be placed into the NGDLC channel bank. It is crucial that competitive carriers are able to specify a particular line card, but a CLEC need not necessarily maintain ownership of the card after it has been plugged into a slot of a channel bank.

In this rehearing, as in the past, Ameritech asserts that a line card collocation requirement will impose significant additional costs upon it. See, generally, Ameritech Ex. 1.0, 4.0, This is the first time that either SBC or Ameritech gives any specifics as to what those cost might actually be, *see, generally*, Ameritech Ex. No. 10.0, despite the fact that the line card collocation issue was contested during three proceedings before this Commission, as well as during the negotiations with the FCC that led to the *Project Pronto Waiver Order*.

Ameritech's claim that it did not know what kind of unbundling requirements it would be subject to until the Commission entered the Order in the instant proceeding seems disingenuous. The issue of line card collocation came

up as early as the spring of 2000, when SBC negotiated a waiver from merger conditions that prohibited SBC from owning advanced services equipment. Subsequent to the negotiations at the FCC, Ameritech had no fewer than three opportunities before this Commission to support, with some estimate of actual costs, its claims that CLEC ownership of line cards presents a major additional expense. It did not take advantage of any.

Staff is skeptical of Ameritech's underlying assumptions for calculating the specific additional capital costs and expenses a line card collocation requirement would necessitate. However, Staff does not dispute the fact that *some* extra cost will be incurred when Ameritech needs to upgrade its OSS systems to inventory different line cards owned by different CLECs. It appears, however, that Ameritech overstates the additional costs it would incur as a result of a line card collocation requirement.

An example of Ameritech's "worst-case scenario" assumptions is the assumption, for the purposes of its cost studies, that each CLEC would have only one customer per service area interface ("SAI") and thus would "waste" 3 of the 4 ports on the line card, or 75% of the port capacity. Ameritech calculates such inefficient port use to be an additional capital cost of $23,169,643 when 50% of the planned 2090 RTs in Illinois have collocated line cards of five different CLECs. This assumes, of course, that CLECs will go to the trouble and expense of collocating a line card in an SAI to serve only one customer – an assumption which is at best questionable.

If, however, one uses the cost figures provided by Ameritech and assumes that CLECs on average use *3* out of the 4 line card ports, the "waste" associated with the transaction is reduced to one-third of Ameritech's calculated amount, $7,723,214. This assumption is considerably more realistic than Ameritech's "worst case" assumption, since it assumes, among other things, that CLECs will not behave irrationally.

This is just one example of Ameritech's use of "worst-case" assumptions, and it shows how easily the additional costs of line card collocation can be, and perhaps are being, inflated.

This notwithstanding, in the event the Commission decides that it wants to avoid *any* uncertainty regarding the additional costs of line card collocation, Staff recommends ordering Ameritech to tariff a complete ADSL capable UNE platform, traversing from the CO to the end user premises, using the Project Pronto architecture. Such a tariffed "NGDLC UNE platform" offering would consist of SBC's current broadband service. Compared to SBC's current broadband service, however, this tariff would ensure that Ameritech cannot unilaterally change or modify the terms and conditions of its offering.

Such a platform approach is one of the methods considered by the FCC in its Line Sharing Reconsideration Order. The FCC stated that "such a platform could be defined to include the loop (both feeder and distribution portions, whether copper or fiber), attached electronics, line-card/DSLAM functionality, ATM switching or its equivalent, and transport." Line Sharing Reconsideration Order, n. 135. The Texas Commission also ordered SBC to unbundle Project

Pronto as an end-to-end UNE in a recent Arbitration Award. *See* Texas Award at 69 *et seq*.

Such a NGDLC UNE platform will achieve the same goals as a line card collocation requirement. This platform, combined with the requirement that Ameritech offer a modified platform when new line cards become available, ensures there will be sufficient demand for new line cards, and will also give CLECs an incentive to express to the licensed manufacturers of such line cards their preferences for line card features. Such manufacturers, recognizing that CLECs are the actual customers, will have a real incentive to incorporate innovative features and functionalities into new line cards. This is essentially the same scenario as with line card collocation, yet additional costs stemming from multiple owners of line cards at the RT would be avoided, as would administrative problems associated with inventorying of cards.

The NGDLC UNE-P would remove all uncertainty concerning Ameritech's claims that such unbundled access would prevent it from economically deploying Project Pronto in Illinois. All of the claimed extra costs of line card collocation stem from the fact that an individual CLEC owns a specific card, and thus the card cannot be shared among other CLECs. Arguments such as these are no longer valid when Ameritech owns the line card.

To ensure CLECs have the ability to specify alternative line cards, the Commission should require Ameritech to offer a new version of the NGDLC UNE platform as soon as either Alcatel or a licensed manufacturer issues a new line card. For example, the parties appear to agree that, as matters stand currently,

only the ADLU card from Alcatel operates in conjunction with the Litespan NGDLC system. However, it is Staff's understanding that Alcatel is currently developing a second line card for the Litespan system. The line card, which will support G.SHDSL, should be made available for any CLEC that requests it, including Ameritech's advanced services affiliate, in a new NGDLC UNE platform offering.

In addition to recognizing, and allowing for, new line card developments, Staff recommends that the Commission order Ameritech to offer a modified NGDLC UNE-P at such time as the vendor of Ameritech's NGDLC system is able to incorporate the capability to provide multiple Permanent Virtual Paths ("PVPs") per channel bank into the system. Ameritech witness Boyer describes a scenario in which a CLEC would reserve all of the DSL capacity in a RT site. Ameritech Ex. 4.0 at 34-37. While Staff is not at all convinced that this is remotely likely, it nonetheless recommends that the Commission not require Ameritech to offer a NGDLC UNE-P with a PVP option until the software in the NGDLC system allows for the "unchaining" of PVPs. When such "unchaining" becomes technically feasible, Ameritech can no longer argue that offering a PVP to a CLEC would reduce the RT's ADSL capacity by one-third. Id. at 34. Currently, the software of the Litespan 2000 system allows for only one dedicated PVP per channel bank assembly. Id.

In addition to eliminating the need for collocation of line cards, the NGDLC UNE platform also eliminates Ameritech's concerns regarding some of the Commission's earlier specific unbundling requirements. Specifically, the

Commission would not need to decide whether the copper sub-loop from the RT to the NID and the copper sub-loop from the RT to the serving area interface SAI") are technically feasible sub-loops. Ameritech Ex. 4.0 at 39.

In filing its direct testimony to this proceeding, Ameritech did not propose these specific UNE offerings. Rather, Ameritech proposed two distinct broadband wholesale offerings over its Project Pronto architecture. The first offering is an end-to-end service that provides only a data path from the end user's premises to the CLECs collocation cage. This service can be optionally offered over a line sharing arrangement when the end user customer also receives voice services from Ameritech. The second offering is an end-to-end service that provides the aforementioned data path as well as a voice path to the collocation cage.

Although Ameritech did introduce its broadband service offering in this proceeding, and provided cost support for the offering, it nonetheless has not proposed final rates or illustrative tariffs for the offering. In fact, it appears Ameritech is not recommending that this offering be ordered through the rehearing process. Rather, Ameritech introduced this offering in response to Commissioner Squires' inquiry.

IV. Costs and Rate Issues

As noted, the Staff recommends that the Commission should require Ameritech to unbundle Project Pronto. Nonetheless, should the Commission conclude that unbundling the Project Pronto architecture is infeasible, the

proposed two services offering by Ameritech are a practical alternative to the current Project Pronto unbundling requirements. However, these offerings should be considered UNEs. *See* Staff Exhibit 1.0 at 11.

Accordingly, Staff proposes, as an alternative to unbundling, that the Commission allow these offerings to be tariffed, and be deemed the "NGDLC UNE Platform." Staff Exhibit 1.0 at 11. The rate structure for the offering should generally correspond to the cost elements found in the testimony of Ameritech witnesses Chris Cass and Cherylann Mears. *See* Ameritech Ex. Nos. 7.0, 7.01, 7.02, 12.0, 12.1. However, there are several fundamental defects with the cost studies for these two service offerings. The next section of this brief enumerates these problems and recommends that the Commission require Ameritech to file revised cost studies with the tariff offering based on these findings.

Ameritech proposes that its two service offerings in this proceeding be considered wholesale services; however, it provides TELRIC studies in support of the offerings. Staff recommends that the offerings be considered UNEs, and as such the rates for the offerings should be based on TELRIC studies. Therefore, the cost studies submitted by Ameritech in this proceeding should be the basis for the UNE rate development.

Even though there are only two end-to-end service offerings, there are several cost elements that need to be combined in order to calculate the TELRIC cost of providing service. The specific elements that must be combined depend on the mix of services requested by the end user customer. In addition, the CLEC itself may provision some of these services. For example, carriers

requesting the data-only service would be required to purchase a sub-loop, if voice service is not being provided to the customer, but would need to purchase an HFPL sub-loop if voice service is being provided on the same line to the customer. A carrier requesting the combined voice and data service offering would not need to purchase a sub-loop individually because its cost is included in the cost of the offering.

Ameritech's cost studies contain several items that must be altered when the tariff for the service is filed. The remainder of this section of the brief discusses these items, and is organized into two sections. In the first section, nonrecurring charges for both of the service offerings will be examined. The second section examines the recurring charges for the cost elements that make up the two service offerings.

The Staff notes that it is the general understanding of the parties to this proceeding that cost and rate issues will be deferred until such time as the Commission determines whether, and to what extent, it will require Ameritech to unbundle the Project Pronto architecture. The Staff, however, addresses the issues of costs and rates in this brief for the limited purpose of making certain that the Commission has all of the information necessary to evaluate the Staff's NGDLC UNE-P proposal, as well as Ameritech's wholesale offerings with rates based upon TELRIC.

A. Non Recurring Charges

1. Manual Loop Configuration Charge

In the initial phase of this proceeding, the Commission rejected Ameritech's proposed manual loop configuration charges, stating that it was "persuaded by Intervenors' argument that loop information should have been accumulated in an Ameritech databases long before now and, therefore, manual processing costs are not appropriate." ICC Docket No. 00-0393, Order at 84. In this Rehearing, AI has presented a new cost study for the development of this charge, presented by AI as Schedule CFC-3 to witness Chris F. Cass' direct testimony. *See* Ameritech Ex. 12.0.

Ameritech developed the manual loop qualification charge it submitted on rehearing by multiplying the labor rate of a drafting clerk by the number of hours required to do the work on average. The company claims that manual loop qualification requires, on average, 29.5 minutes of labor by a drafting clerk. The fully loaded labor rate of this clerk is $42.91 per hour. Thus, Ameritech calculates the resulting cost of performing this loop qualification service to be $21.10, which the company proposes as its nonrecurring charge for manual loop qualification.

This approach is a departure from what the company proposed in the initial phase of this docket. In that phase, Ameritech calculated a per minute rate of $1.98 for the work performed in loop qualification, by marking up the hourly loaded labor rate of an engineer, $88.68, by 33.6% and then dividing the product by 60 minutes. *See* Order at 83, Docket No. 00-0393. Ameritech does not explain why it has chosen a new methodology for this rehearing.

There are two distinct advantages to the method Ameritech presents in this rehearing. First, developing a labor rate using a drafting clerk's labor rate is more appropriate than applying an engineer's labor rate. The manual processes involved in this task do not require an engineer's expertise. Second, developing the charge as a flat rate rather than a per-minute rate is preferable because the actual amount that a CLEC would have to pay for this information would be known. In the Order, the Commission endorsed this approach when it stated that a "to be determined" rate is not appropriate. Order at 84. Because of these two changes in methodology, the method proposed by Ameritech on rehearing is an improvement over its previous proposal.

In Staff's opinion, the Commission's original decision on this issue was correct. As previously noted, the Commission determined – correctly, in the Staff's view – that Ameritech should not be allowed to recover costs for manual loop qualification. Consequently, the testimony and cost support provided by the company for this charge should not be given weight. However, if the Commission reconsiders its position and elects to permit Ameritech to recover manual loop qualification costs, Ameritech's proposed rate for manual loop configuration is reasonable.

2. Nonrecurring Costs for the Data Portion of Broadband Offerings

There are four nonrecurring elements that all must be combined in order to provide data service to end users: DLE SAI cross-connect, DLE DSL sub-loop, OCD port termination, OCD cross-connect to collocation. The OCD termination

and cross-connect elements can be via a DS3 or OC3c connection to the CLEC collocation space.

It appears that that Ameritech intends to recover installation and disconnection costs for each of these elements in the upfront nonrecurring charges, with the exception of the DLE SAI cross-connect charge. However, inclusion of the disconnection costs has the impact of creating a barrier to CLEC entry into the broadband market. Ameritech made this same proposal for the HFPL cross connect configuration in the initial phase of this docket. After reviewing the positions of all parties, the Commission ruled that disconnection charges should only be assessed at the time of disconnection. Order at 89-90, ICC Docket 00-0393. The Commission's decision in that phase of the proceeding remains the correct one, and is consistent with the Staff's proposal in this rehearing. Staff proposes that all of the disconnection charges be removed from each of the elements when a tariff is ultimately filed.

3. Nonrecurring Costs for the Voice Portion of Broadband Offerings

Ameritech proposes a single combined voice and data service offering. However, "combined voice and data service" is a misnomer. This service provides nothing more than a voice path to customers, and must be used in conjunction with other data service offerings to provide service to end users. As with the data service charges, this offering includes disconnection costs as part of the nonrecurring charge. For the same reasons as stated above, Staff

recommends that all disconnection costs be removed from this element when a tariff is ultimately filed.

4. Staff's Recommended Changes to Nonrecurring Costs

The table below lists Staff's specific recommendations concerning nonrecurring costs.

Element	Ameritech's proposal	Staff proposal
Manual Loop Qualification	$21.10	$0.00
DLE SAI 2 wire cross-connect	$62.05	$62.05
DLE-DSL sub-loop (data only) 2 wire cross-connect	$10.39	$8.69
OCD Port (DS3 Port)	$180.17	$98.81
OCD Port (OC3 Port)	$156.37	$86.91
OCD cross-connect to collocation (DS3)	$117.50	$96.43
OCD cross-connect to collocation (OC3)	$117.50	$92.47
DLE combined voice and data service	$79.76	$69.07

B. Recurring Charges

1. Recovery of Costs Not Related to the Provisioning of Broadband Services

There is a fundamental flaw in the development of recurring costs for both of the broadband offerings. Specifically, Ameritech is improperly attributing costs for its voice network onto the DLE-ADSL PVC cost element of the data only service offering and the combined voice and data service offering. Ameritech Ex. 7.01P, 7.02P. As a result, the costs for these two elements are unreasonably inflated, and not TELRIC based. Consequently, Ameritech's competitors will be compelled to contribute to the recovery of costs attributable to Ameritech's own voice customers. This is entirely improper, and the Commission should direct Ameritech to address this deficiency when it files its NGDLC UNE platform tariffs.

In the development of the Project Pronto architecture, the NGDLC capacity is apportioned so that two-thirds of the system is designed to carry only lines for AI's voice network, and one-third of the system is to be used for the broadband service offerings that are the subject of this proceeding. Tr. at 1579 (*in camera*). Many of the costs associated with the NGDLC are shared between the voice network and the broadband service offerings. Ameritech Ex. 7.01P, 7.02P. There are also costs that are directly assignable to each of these specific services. Id. The cost studies in this proceeding should provide a reasonable weighting of the shared costs of the NGDLC, as well as isolate the costs of equipment that is directly assignable to specific services.

a. Litespan 2000 cabinet

An example of a shared facility is the Litespan 2000 cabinet. The cabinet has 9 channel banks, 6 of which are to be used for Ameritech's voice network and 3 of which are to be used for the broadband service offering. Accordingly, it follows that two-thirds of the cost of this cabinet should be assigned to Ameritech's voice network, and the remaining one-third should be apportioned between the data-only and combined voice and data service offerings. However, Ameritech witness Mears testified that one-quarter of the cost of the entire cabinet is assigned to the data-only service offering and three-quarters of the cost of the entire cabinet is assigned to the combined voice and data offering. Tr. at 1580. Therefore, when the three channel banks assigned to the broadband service offerings are fully utilized, the entire cost of the cabinet will be recovered. Tr. at 1581. It is apparent from this that Ameritech's data competitors will be subsidizing the costs attributable to Ameritech's voice customers. To the extent that the Ameritech customers in question are residential customers, Ameritech's competitors will be subsidizing Ameritech's noncompetitive services.

Clearly, only one-third of the cost of the Litespan 2000 cabinet should be assigned to the broadband service offerings. The cost of the cabinet needs to be further allocated to both of the service offerings. This cost should be allocated equally between the two services. Thus, 16.67% (33% divided by 2) of the total cost of the cabinet should be assigned to the DLE-ADSL PVC cost element of the data only service offering and 16.67% of the total cost of the cabinet should be assigned to the combined voice and data service offering.

b. Common PIE Equipment

There is another set of facilities that are shared between AI's voice services and the two broadband service offerings. These facilities are a part of what AI calls "Common PIE" equipment. Ameritech Ex. 7.01P. Although some of these facilities are directly assignable to specific services, many of these facilities are shared. The complete list of these facilities is located in both of the recurring cost studies submitted in this proceeding. *See* Ameritech Ex. 7.01 at Tab 8.5; Ex. 7.02P at Tab 8.5. Ameritech uses the same improper allocation for apportioning costs of these facilities as it does with the Litespan 2000 cabinet- 25% of the total cost of these facilities are assigned to the data service offering and 75% of the total cost of these facilities are assigned to the combined voice and data service offering. As with the cabinet, the appropriate allocation of the total cost of these facilities to each of the broadband offerings is 16.67%.

c. Bank Control Units

As noted above, some of the Common PIE equipment is directly assignable to specific services. There are two types of bank control units that are used in the Litespan 2000 system. One type of bank control unit is a relatively inexpensive facility needed for the provisioning of voice only services and can be found on the six channel banks assigned to AI's voice network. Ameritech Ex. 7.01 at Tab 8.5; Ex. 7.02P at Tab 8.5. The other type of bank control unit, the ATM bank control unit, is a more sophisticated and more expensive piece of equipment than its predecessor, and is found on the three channel banks used for the provisioning of the two services in this proceeding. Id.

The ATM bank control unit cost is apportioned at 86.7% for the data only service offering and 13.3% for the combined voice and data service offering. Id. This allocation is proper, as the 86.7% apportionment of this more expensive ATM bank control unit represents the incrementally higher cost of providing a bank control unit to the DSL environment. The 13.3% apportionment for the combined voice and data service offering represents the cost that the voice customers would otherwise face if they were on an ordinary voice network.

The problem lies in the fact that 100% of the cost of the ordinary bank control unit is apportioned to the combined voice and data service offering. As noted above, these facilities are used for Ameritech's voice network specifically, and not for the services in this proceeding at all. Therefore, any apportionment of these costs to either of the two broadband service offerings is improper. Staff recommends that the Commission direct Ameritech to back this cost completely out of its NGDLC UNE platform tariffs.

d. POTS Cards

There are two types of line cards used in the Litespan 2000 system. The POTS card is used on the 6 channel banks dedicated to AI's voice network. The ADLU card is used on the 3 channel banks dedicated to the broadband service offerings. Ameritech Ex. 7.01 at Tab 8.5; Ex. 7.02P at Tab 8.5. The ADLU card is apportioned at 78.4% for the data only service and 21.6% for the combined voice and data service. Id. This weighting is proper, due to the higher incremental cost of a line card used in the DSL environment. The 21.6%

apportionment for the combined voice and data service is equivalent to the cost of an ordinary POTS card.

If the above-mentioned costs were the only line card costs to be recovered, Ameritech's method would be completely unobjectionable. However, as with the bank control units, 100% of the costs attributable to the POTS cards are apportioned to the combined voice and data service offering. These facilities are also used exclusively for AI's voice network and, therefore, any apportionment of these costs to either of the two broadband service offerings is improper. The Commission should direct Ameritech to back these costs completely out of its NGDLC UNE platform tariffs.

2. Recurring Costs for the Data Portion of Broadband Offerings

There are four recurring cost elements that all must be combined in order to provide data service to end-users: the DLE-ADSL sub-loop, DLE-ADSL PVC, OCD port termination, and OCD cross-connect to collocation. Ameritech Ex. 7.0 at 4-5. The sub-loop is offered as either a whole sub-loop for the provisioning of data only service or as an HFPL sub-loop when line sharing exists for an Ameritech voice customer. Id. at 5. The OCD termination and cross-connect elements can be via a DS3 or OC3c connection to the CLEC collocation space. Id.

a. The HFPL Sub-Loop Cost Element

The Commission should not permit Ameritech to recover, in this or any subsequent proceeding, certain costs that it has submitted. First, Ameritech

seeks to recover the "costs" it incurs through provisioning of the HFPL sub-loop. However, the costs that it incurs for the HFPL sub-loop are in fact zero, and zero is what the company should be allowed to recover. The Commission concluded in the initial phase of this proceeding that the HFPL loop rate should be zero, and there is no difference between the logic determining the rate for the HFPL portion of the whole loop versus the HFPL portion of the sub-loop. Second, AI has departed from its argument in the initial phase of the proceeding, in that it no longer contends that the proper HFPL rate should be 50% of the UNE rate for the loop. Under AI's new proposal, the HFPL sub-loop is equivalent to the sub-loop rate. AI does not provide any basis for departing from the method used in the initial phase of this proceeding, nor from the determination to rate the HFPL at zero.

The facts regarding this matter are, very simply, as follows: (1) Ameritech does not assert anywhere that it incurs any *additional* incremental joint and common costs as a result of a competitor's use of the HFPL; (2) it has in the past allocated 100% of such costs to voice, and, accordingly has allocated 0% to the HFPL; (3) its assertion that it fails to recover loop costs from the voice portion of the loop is highly debatable, and (4) it has not undertaken at any point in this proceeding to insure against over-recovery. The Staff would find Ameritech's position somewhat more worthy of consideration if, to the extent that it over-recovered its costs, it were prepared to refund overpayments to end-users. Ameritech has not, however, to the Staff's knowledge, done so.

Ameritech's contentions that it is somehow discriminatory and illegal to allow $0 recovery are perplexing. Ameritech is, in essence, attempting to charge for something it has already sold. It is difficult to determine how prohibiting someone from selling someone rights that it has already sold another constitutes discrimination or a taking, especially where, as here, the owner of the rights – the end user – wishes to use them to obtain service from the other party that Ameritech is attempting to charge, the data CLEC.

b. The Whole Sub-Loop Cost Element

The whole sub-loop is developed using Ameritech's in-house loop cost model, LFAM. The Commission has not yet approved LFAM[4]. Although sub-loop rates are currently in effect in Illinois using LFAM, an investigation into the model and sub-loop rates developed by it will soon take place. The Commission initiated Docket 00-0538/0539 (Consol.), in part, to examine these issues. *See* Initiating Order, ICC Docket No. 00-0538/0539. The Docket was dismissed after Ameritech withdrew the tariffs at issue; new proceeding will be initiated after Ameritech filed revised tariffs.

For the whole sub-loop cost element, Staff recommends that the Commission use the costs submitted by AI in this proceeding on an interim basis. An examination of the sub-loop UNE and the LFAM model are outside the scope

[4] Ameritech has submitted costs developed by the LFAM model in the Alternative Regulation Review, ICC Dockets No. 98-0252/0335; 00-0764. There, the HEPO was critical of the LFAM model on a number of grounds, noting that the model failed to comply with Part 791 rules. In addition, the HEPO observed that LFAM produced loop costs significantly higher than previous loop costs, a result which, the HEPO, merited a high degree of skepticism. HEPO at 70-71.

of this proceeding. After the sub-loop rate and LFAM model are fully investigated, any rates developed in compliance with this rehearing may need to be revised.

c. The DLE-ADSL PVC Cost Element

As was mentioned previously, there are significant flaws with the development of some of the costs elements associated with the DLE-ADSL PVC. The Commission should direct Ameritech to resubmit its cost study for this element when filing its tariff pages for the NGDLC UNE platform.

d. The OCD Port Termination and OCD Cross-Connect to Collocation Cost Elements

Staff has no recommended changes to the studies that develop these two cost elements at this time. However, Staff reserves the right, upon further review of these cost elements, to make recommendations regarding them at such time as Ameritech files NGDLC UNE platform tariffs.

3. Recurring Cost for the Combined Voice and Data Portion of Broadband Offerings

As with the nonrecurring costs for the two broadband service offerings, there is only one combined voice and data service recurring cost developed, and it must be used in conjunction with the data service offerings described above. This element provides the voice path from an end user to a CLEC over the Project Pronto architecture. As such, this offering provides the same functionality of a UNE loop.

Ameritech proposes only one rate for the service, unlike the three de-averaged rates it proposes for UNE loops. Ameritech Illinois Ex. 7.02P at Tab 3.0. The rate for this proposed service is in excess of the most expensive of the three existing UNE loop rates. The combined voice and data service cost is developed to be $17.04, as compared to UNE loops that range from $2.60 to $11.40. *See* Ameritech Illinois Ex. 7.02P, at Tab 3.0 (combined voice and data service cost); see also Ameritech Illinois Tariff 20, Part 19, Section 2, 2nd Revised Sheet No. 31 (AI's most current UNE loop rates). Since this new service is an optional offering, no rational CLEC that provides both data and voice services to an end user is likely to consider ordering it. A CLEC would be better off by providing two separate lines to a customer's premises- one provisioned by the existing UNE loop tariff for voice service and the other through the data only broadband service offering of the NGDLC UNE platform, rather than to share one line provided through purchasing both the data only service and the combined voice and data service as proposed by AI.

Ameritech asserts, through its cost studies, that it is more expensive to provide this combined voice and data service than to provide ordinary UNE loops. See generally, Ameritech Ex. 7.01P, 7.02P. However, there is no reasonable explanation as to why this service should not cost the same as a UNE loop. The same technology used for the provisioning of UNE loops is used in the provisioning of this voice path.

Factors that artificially raise the cost of this offering over the cost of the UNE loop were discussed previously. First, the study that develops this cost

element is flawed. Costs associated with AI's voice network are allocated to this offering, which has the effect of inflating the total cost and the eventual rate that CLECs would have to pay. Second, the cost of the sub-loop is included in the overall cost of the combined voice and data offering. As noted above, the cost of the sub-loop has not yet been examined. The sub-loop represents 40% of the cost of this offering ($6.86/$17.04). To the extent that the cost of the sub-loop is inflated, the cost of the combined voice and data offering will also be inflated. Since the development of the sub-loop cost is outside the scope of this proceeding, Staff can only cast a shadow of doubt on this figure at this time.

For the reasons stated above, Staff recommends that the rates for this voice path revert to the existing UNE loop rates.

Finally, the Staff notes that it presents evidence and argument regarding costs and rates for the limited purpose of assisting the Commission in evaluating the Staff's NGDLC UNE-P proposal.

V. OSS Issues

A. CLECs Are Not Entitled To Unlimited Direct Access To Ameritech Illinois Back Office Systems

In its application for rehearing, Ameritech argues that the Commission's decision to allow CLECs direct access to Ameritech's back office systems has no legal or factual basis. Ameritech's interpretation of the UNE Remand Order is too narrow and the Intervenor's interpretation is too broad. The CLECs ask for "access to back end systems and databases that contain information that is useful in provisioning line shared DSL service – information on outside plant

central office equipment." Direct Testimony of Rhythms Links witness Joseph Ayala, at 7, 10. The Commission's decision in the Order[5] was correct in light of the UNE Remand Order, and is consistent with related Commission decisions -- the Line Sharing Arbitration Decision[6].

Federal law does not require Ameritech to provide direct or unmitigated access to its back office systems. In its UNE Remand Order, the FCC clarified that, under its rules, "an incumbent LEC must provide the requesting carrier with non-discriminatory access to the same detailed loop qualification *information* about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." UNE Remand Order ¶ 427 (Emphasis added). Under the FCC's nondiscrimination requirement, "an incumbent LEC must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer." Id. ¶ 428. Hence, "the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer." UNE

[5] In re Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service, ICC Docket Nos. 00-0393 (Mar. 14, 2001) ("Order").
[6] In re Covad Communications Company, Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award, Arbitration Decision, ICC Docket Nos. 00-0312/00-0313 (Aug 17, 2000) ("Line Sharing Arbitration Decision").

Remand Order ¶ 428. Thus, as is plain from the language in the UNE Remand Order, the FCC requires direct or unfiltered access to information in incumbent LECs' back office systems, not direct or unmitigated access to the systems themselves.

CLECs are not entitled under federal law to every piece of information in an incumbent LEC's records or databases. Rather, incumbent LECs must provide and CLECs are entitled to "nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." UNE Remand Order, ¶ 428. The FCC provided examples of the types of information that must be made available to CLECs, all of which relate to characteristics of the loop itself and, as such, allow requesting carriers to determine for themselves whether "those loops are suitable for the services the requesting carriers seek to offer." Id., ¶ 428. Given the illustrative examples provided by the FCC, the Commission has consistently and correctly read the UNE Remand Order to require access to information in Ameritech's records and databases related to the loop, not access to all information in Ameritech's back office systems. See OSS Arbitration Order at 82-83 (restricting access to marketing information specifically and discussing security and confidentiality concerns generally); Line Sharing Arbitration Decision at 43-44; Order at 65-66.

Federal law requires nondiscriminatory access to loop information in the same format (i.e. electronic or paper), not unmitigated, shared access to an

incumbent LEC's back office systems. Suppose, for example, Ameritech's loop information existed only in paper form. Federal law, let alone common sense, does not require Ameritech to allow every CLEC access to its facilities to view the original paper documents, wherever they may be stored. Instead, access to copies of the original documents would satisfy the nondiscrimination requirement and still allow CLECs to determine for themselves whether a particular loop is capable of supporting services the carrier intends to provide. So too, with electronic access. Federal law requires that the incumbent LEC's loop information be provided to CLECs in the same format -- that is, electronic or paper -- not that the incumbent LEC must provide CLECs direct, unmitigated electronic access to its back office systems themselves. See UNE Remand Order ¶ 426 ("[T]o the extent [an incumbent LEC's] employees have access to the [loop qualification] information in an electronic format, that same format should be made available to new entrants via an electronic interface."). Thus, under federal law, if Ameritech personnel (or personnel of it's affiliates) access loop information in an electronic format, then CLECs must also be given access to that loop information in an electronic format.[7] Unfiltered access to Ameritech's loop information via an electronic interface (gateway access, for example) fulfills this nondiscrimination access requirement. Accordingly, the Commission correctly interpreted federal law to require Ameritech to provide Intervenors with unfiltered access to loop information, not direct, unmitigated access to the back

[7] As the FCC found, it would be discriminatory for an incumbent LEC's personnel to access loop information electronically while a CLEC's personnel are permitted only manual access. UNE Remand Order ¶ 429.

office systems themselves. Therefore, the Intervenor's contention is without merit.

In the OSS Arbitration, the Commission determined that federal law required only that Ameritech provide unfiltered, nondiscriminatory access to loop information and not direct, unmitigated access to the back office systems themselves, it went on to consider Covad's direct access proposal. See OSS Arbitration Order at 82-83[This is not final- you should note that more than just by the definition of OSS Arbitration Order]. The Commission found, however, that given the lack of attention directed to the issue by the CLECs, the limited record, and various, unresolved concerns associated with the direct access proposal, it was unwilling to go beyond federal law and impose a direct access requirement in the Plan of Record. The Commission's finding is proper and supported by the record.

Providing CLECs with non-discriminatory access to the same detailed loop qualification information loop that is available to the incumbent, so that the requesting carrier can make an independent judgment on what information is needed to provide its service is consistent with the Commission's Line Sharing Arbitration Decision and Order. The Commission in the Line Sharing Arbitration Decision ordered Ameritech to provide Covad and Rhythms Links with "read-only access to all data contained in any record, database or backend system of Ameritech that may be useful to Covad or Rhythms in the provision of xDSL-based services on line shared loops." Line Sharing Arbitration Decision, at 44 (emphasis added). The Commission explained:

> To fulfill this requirement Ameritech must make available all of the data elements SBC has agreed to provide CLECs during the [Plan of Record] process by the effective date of this Order. In addition, Ameritech shall provide information currently available to any Ameritech employee detailing OSS support for line sharing provisioned over the new Project Pronto configuration currently being deployed by Ameritech. Ameritech shall provide updated information to CLECs regarding Project Pronto in advance of additional deployment.

Id.

Thus, in the Line Sharing Arbitration Decision, the Commission ordered Ameritech to provide Covad and Rhythms with nondiscriminatory access to loop information in its records, databases, or back office systems, not direct, unmitigated access to the back office systems themselves. In doing so, the Commission specifically observed that it "has the authority to require Ameritech to provide CLECs with access to all of the loop provisioning data in its records, databases and backend systems, pursuant to the FCC's UNE Remand order." Id. (emphasis added).

The Order also speaks in terms of loop information, and orders that Ameritech provide "read only, mediated, direct access and gateways to all of the loop provisioning data available in Ameritech-Illinois' back end systems, databases, and records without restriction." Id. at 65. The Commission did not order that Ameritech must provide Covad direct, unmitigated access to the back office systems themselves. Moreover, the Commission also referred approvingly to its decision in the Line Sharing Arbitration Decision, where, as explained above, the Commission ordered Ameritech to provide Covad and Rhythms with nondiscriminatory access to loop information in its records, databases, or back

office systems, not direct, unmitigated access to the back office systems themselves.

Indeed, if the Commission had ordered direct, unmitigated access to the back office systems themselves, there would have been no need for the Commission to allow Covad to audit Ameritech's records, databases, and back office systems to determine "all OSS functionality and data useful in provisioning line shared xDSL" because Covad would have been given access to all information in Ameritech's systems. Order, at 65; UNE Remand Order ¶ 427.

Additionally, on March 15, 2001, the Commission granted rehearing on various issues in the OSS Arbitration case and authorized further proceedings. As part of the rehearing process in that case, the Commission revisited the issue of direct access to back office systems. Currently, the proposed order for the OSS Arbitration rehearing has been issued and is awaiting Commission action. That proposed order reiterates the findings of the OSS Arbitration Order, stating that confidentiality and security issues that emanate from "unlimited, unrestricted and undefined" direct access have not been resolved, and therefore CLECs should not be afforded direct access to back office systems. Proposed Order for OSS Arbitration Re-Hearing at 12. If that language is entered into the OSS Arbitration re-hearing's final order, it will accurately reflect the requirements of federal law and remain consistent with the Commission's decisions in the OSS Arbitration Order, Line Sharing Arbitration Decision, and Order.

The proper level of CLEC access to Ameritech's OSS is nondiscriminatory access to the same detailed loop qualification information that is available to the

incumbent, so that the requesting carrier can make an independent judgment about the capabilities of the loop. The focus should be on the loop information, and whether the CLEC can access the information in substantially the same time and manner as Ameritech.

B. CLECs Should Audit Ameritech-Illinois Back Office Systems To Identify Information Useful To Provisioning Of Service

In the initial Order, the Commission found that CLECs should be able to audit all OSS databases and back office systems to determine all OSS functionality and data useful in provisioning service. OSS Line Sharing Decision at 65-66. Staff did not address this issue in the initial hearing, however, it agrees with the Commission's findings, and the evidence presented by Rhythms Links witness Joseph Ayala supports the implementation of an audit.

The CLECs should have direct or unfiltered access to loop information in incumbent LECs' back office systems, not direct or unmitigated access to all information in Ameritech's back office systems. CLECs should be aware of, and be able to access, loop information in those systems that are relevant to providing their service. To establish what fields the CLECs should have access to, Staff supports the Commission's finding in the initial Order authorizing a CLEC audit of OSS databases. Id. at 65-66.

In addition to that, Rhythms Links witness Joseph Ayala alleged that Ameritech has developed two new systems relevant to provisioning of line shared xDSL service – SMART and PCAT. Rhythms Links Direct Testimony of Joseph Ayala at 22-12. If Ameritech uses those systems, or comparable

systems, in Illinois, then those systems should be added to the list of systems to be audited. *See* OSS Line Sharing Decision at 65-66 (listing the systems CLECs can audit).

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

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